or services are unique or highly specialized;

- (2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made:
- (3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;
- (4) The projected orders are so integrally related that only a single contractor can reasonably perform the work;
- (5) The total estimated value of the contract is less than the simplified acquisition threshold; or
- (6) Multiple awards would not be in the best interests of the Government.
- (C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).
- (D)(1) No task or delivery order contract in an amount estimated to exceed \$103 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—
- (i) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;
- (ii) The contract provides only for firm-fixed price (see 16.202) task or delivery orders for—
- (A) Products for which unit prices are established in the contract; or
- (B) Services for which prices are established in the contract for the specific tasks to be performed;
- (iii) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
- (iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.
- (2) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(1)(iv) of this section.
- (3) The requirement for a determination for a single-award contract greater than \$103 million:

- (i) Is in addition to any applicable requirements of Subpart 6.3.
- (ii) Is not applicable for architect-engineer services awarded pursuant to Subpart 36.6.
- (2) Contracts for advisory and assistance services. (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$12.5 million, including all options, the contracting officer must make multiple awards unless—
- (A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;
- (B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or
 - (C) Only one offer is received.
- (ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

[65 FR 24318, Apr. 25, 2000, as amended at 71 FR 57367, Sept. 28, 2006; 73 FR 54010, Sept. 17, 2008; 75 FR 13421, Mar. 19, 2010; 75 FR 53133, Aug. 30, 2010]

16.505 Ordering.

- (a) General. (1) In general, the contracting officer does not synopsize orders under indefinite-delivery contracts; but see 16.505(a)(10) for orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the

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scope, issued within the period of performance, and be within the maximum value of the contract.

- (3) Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a) and Subpart 37.6).
- (4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see 39.103(a)).
- (5) Orders may be placed by using any medium specified in the contract.
- (6) Orders placed under indefinite-delivery contracts must contain the following information:
 - (i) Date of order.
- (ii) Contract number and order number.
- (iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.
- (iv) Delivery or performance schedule.
- (v) Place of delivery or performance (including consignee).
- (vi) Any packaging, packing, and shipping instructions.
- (vii) Accounting and appropriation data.
- (viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).
- (7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—
- (i) Are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see part 39);
- (ii) May not be used to circumvent conditions and limitations imposed on the use of funds (e.g., 31 U.S.C. 1501(a)(1)); and
- (iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see 2.101(b)).
- (8) In accordance with section 1427(b) of Public Law 108–136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, shall—

- (i) Be awarded using the procedures at Subpart 36.6; and
- (ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.
- (9)(i) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—
- (A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or
- (B) A protest of an order valued in excess of \$10 million. Protests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures at 33.104.
- (ii) The authority to protest the placement of an order under this subpart expires on May 27, 2011. (10 U.S.C. 2304a(d) and 2304c(d), and 41 U.S.C. 253h(d) and 253j(d)).
- (10) Publicize orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) as follows:
- (i) Notices of proposed orders shall follow the procedures in 5.704 for posting orders.
- (ii) Award notices for orders shall follow the procedures in 5.705.
- (11) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).
- (b) Orders under multiple award contracts—(1) Fair opportunity. (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.
- (ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep

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submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order and the order does not exceed \$5 million. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting must-

- (A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
- (B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
- (C) Tailor the procedures to each acquisition:
- (D) Include the procedures in the solicitation and the contract; and
- (E) Consider price or cost under each order as one of the factors in the selection decision.
- (iii) Orders exceeding \$5 million. For task or delivery orders in excess of \$5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—
- (A) A notice of the task or delivery order that includes a clear statement of the agency's requirements;
 - (B) A reasonable response period;
- (C) Disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;
- (D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and
- (E) An opportunity for a postaward debriefing in accordance with paragraph (b)(4) of this section.

- (iv) The contracting officer should consider the following when developing the procedures:
- (A)(1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.
- (2) Potential impact on other orders placed with the contractor.
- (3) Minimum order requirements.
- (4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.
- (5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—
- (i) Seeking comments from two or more contractors on draft statements of work:
- (ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.
- (B) Formal evaluation plans or scoring of quotes or offers are not required.
- (2) Exceptions to the fair opportunity process. The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$3,000 unless one of the following statutory exceptions applies:
- (i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.
- (ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.
- (iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already

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issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

- (iv) It is necessary to place an order to satisfy a minimum guarantee.
- (3) Pricing orders. If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.
- (4) Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million. The contracting officer shall notify unsuccessful awardees when the total price of a task or delivery order exceeds \$5 million.
- (i) The procedures at 15.503(b)(1) shall be followed when providing postaward notification to unsuccessful awardees.
- (ii) The procedures at 15.506 shall be followed when providing postaward debriefing to unsuccessful awardees.
- (iii) A summary of the debriefing shall be included in the task or delivery order file.
- (5) Decision documentation for orders. The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).
- (6) Task-order and delivery-order ombudsman. The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.
- (c) Limitation on ordering period for task-order contracts for advisory and as-

sistance services. (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

- (2) The 5-year limitation does not apply when—
- (i) A longer ordering period is specifically authorized by a statute; or
- (ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.
- (3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—
- (i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and
- (ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

[65 FR 24319, Apr. 25, 2000, as amended at 67 FR 56119, Aug. 30, 2002; 68 FR 60005, Oct. 20, 2003; 70 FR 11738, Mar. 9, 2005; 71 FR 218, Jan. 3, 2006; 71 FR 57367, Sept. 28, 2006; 73 FR 54010, Sept. 17, 2008; 74 FR 14639, Mar. 31, 2009; 74 FR 65604, Dec. 10, 2009]

16.506 Solicitation provisions and contract clauses.

- (a) Insert the clause at 52.216–18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.
- (b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.